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Attorneys for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CHANDRA SANDERS, KEITH
YONAI, AND BONNIER
CORPORATION, a Florida
Corporation, on Behalf of Themselves
and All Others Similarly Situated.

Plaintiff.

vs.

APPLE INC., a California
Corporation; and DOES 1 through
250, inclusive

Defendants.

CASE NO.: 5:08-CV-01713-JF

**NOTICE OF VOLUNTARY
DISMISSAL PURSUANT TO FED.
R. CIV. P. 41(a)(1)**

Action Filed: March 31, 2008
Judge: Hon. Jeremy Fogel

1 PLEASE TAKE NOTICE that Chandra Sanders, Keith Yonai, and the Bonnier
2 Corporation (“Plaintiffs”), through their counsel of record, hereby voluntarily
3 dismiss their individual claims, with prejudice, pursuant to Fed. R. Civ. Pro.
4 41(a)(1), as follows:

5 WHEREAS, this action for unjust enrichment, fraudulent concealment, breach
6 of express warranty, and violation of California Business and Professions Code
7 sections 17200 *et seq.* was filed on March 31, 2008;

8 WHEREAS, a First Amended Class Action Complaint was filed on August 7,
9 2008;

10 WHEREAS, on January 21, 2009, the Court granted defendant Apple, Inc.’s
11 Motion to Dismiss, granting leave to amend;

12 WHEREAS, Plaintiffs have elected not to file an amended complaint;

13 WHEREAS, no defendant has answered and no defendant has filed a motion
14 for summary judgment;

15 WHEREAS, Plaintiffs and their counsel have decided to voluntarily dismiss
16 the individual claims of Plaintiffs with prejudice;

17 WHEREAS, under Federal rule of Civil Procedure 41(a)(1), Plaintiffs are
18 entitled to dismiss this action on their own initiative:

19 Subject to the provisions of Rule 23(e), of Rule 66, and
20 any statute of the United States, an action may be
21 dismissed by the plaintiff without order of the court (i) by
22 filing a notice of dismissal at any time before service by
23 the adverse party of an answer or of a motion for
24 summary judgment...

25 WHEREAS, this case involves putative class claims;

26 WHEREAS, the putative class has not been certified and Plaintiffs have not
27 filed a motion for class certification;

28 WHEREAS, Federal Rules of Civil Procedure, rule 23(e)(1)(A) is inapplicable

1 to the instant dismissal as Rule 23(e) was amended in 2003 to resolve the ambiguity
2 in the former Rule 23(e)'s reference to dismissal of "a class action" *see* 2003
3 Advisory Committee Notes, and now provides:

4 The court must approve any settlement, voluntary
5 dismissal, or compromise of the claims, issues, or
6 defenses of a *certified class*.

7 Fed. R. Civ. Pro. 23(e); *see e.g.*, *Cook v. WMC Mortgage Corp.*, No. 06-535, 2006
8 WL 2873439, at *1 (S.D. Ill Oct. 5, 2006) (permitting voluntary dismissal of putative
9 class action pursuant to Fed. R. Civ. Pro. 41(a)(1)(i) and discussing Rule 23
10 amendments);

11 WHEREAS, no prejudice to absent putative class members will result from
12 dismissal of this action, because a class has not been certified and the dismissal will
13 not affect their rights;

14 WHEREAS, Federal Rule of Civil Procedure 23(e)(1)(B) is inapplicable to the
15 instant dismissal as none of the absent putative class members would be bound. Fed.
16 R. Civ. Pro. 23(e)(1)(B); *see also* 2003 Advisory Committee Notes ("notice is not
17 required when the settlement only binds the individual class representatives"); and

18 WHEREAS, no notice need be sent to absent putative class members, because
19 a class has not been certified, the case is in its infancy, the case has not been widely
20 publicized and no absent putative class member will be bound by the voluntary
21 dismissal of Plaintiffs' claims.

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1 THEREFORE, Plaintiffs hereby dismiss the action with prejudice as to the
2 individual claims of Plaintiffs.

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4 Dated: February 27, 2009

KABATECK BROWN KELLNER LLP

5
6 By: _____ /s/
7 ALFREDO TORRIJOS
8 Attorneys for Plaintiffs

9
10 IT IS SO ORDERED.

11 Dated: 3/2/09

12 By: _____

13 Hon. Jeremy Fogel
United States District Court Judge